IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL APPEAL NO.2169 SB OF 2003

DATE OF DECISION: DECEMBER 11, 2007

Narain Dass

.....Appellant

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. R. S. Mamli, Advocate,
for the appellant.

Mr. Yashwinder Singh, AAG, Haryana,
for the State.

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RANJIT SINGH, J. (ORAL)

Appellant Narain Dass stands convicted for offences under Sections 363, 366, 376 and 506 IPC. Allegation against him is that he kidnapped Shalu Rani aged about 16 years daughter of Ravinder Kumar. On 24.12.2001, Shalu Rani, prosecutrix, (PW8), had left her house in the morning for going to the house of her grand mother. Enroute, she met Neelam and her daughter Anu. They are mother and sister of the appellant. Anu asked PW8 to accompany her to the market. PW8 initially said that she would first go to her house and seek

permission from her mother but on being persuaded, she agreed to accompany Anu. In the market, they met the appellant in front of the office of committee. Anu and her mother, Neelam forced her to accompany the appellant. They also allegedly extended threats to her if she refused to accompany the appellant. Allegation even is that Anu had threatened the prosecutrix that she would be kidnapped and killed if she did not accompany the appellant. She was shown knife as well. The prosecutrix thereafter boarded a bus from Jagadhri. The appellant first took her to Ambala and then to Jalandhar, from where the appellant made her forcibly to board a train to Calcutta. There the prosecutrix stayed in the company of the appellant for 2-3 days, where she was subjected to forcible sexual intercourse against her will. Prosecutrix states that the appellant continuously advanced threats to her, telling that she would be done to death if she disclosed anything to any one. The appellant then took the prosecutrix to his native village and confined her in a room, where he used to commit rape. The appellant, thus, had a sexual intercourse with the prosecutrix on several occasions upto 4.2.2002, till the police party came there and apprehended him alongwith the prosecutrix. They both were taken to Police Station, Alipur Dwar, District Jalpaiguri (West Bengal). On 5.2.2002, the appellant was produced before the Ilaqa Magistrate at Alipur Dwar, District Jalpaiguri and brought to Jagadhri after obtaining police remand from the said Magistrate. Back in Jagadhri, father of the prosecutrix had given an application, Ex.PJ/1, on 24.1.2002, when he could not locate his daughter despite search. This lead to registration of FIR.

The appellant was subjected to medical examination on

8.2.2002. The prosecutrix was also medico-legally examined by Dr.Mamta Goel and MLR is at Ex.PL. The doctor opined that there was a sexual intercourse in this case. After completion of investigation, challan was presented, leading to trial and conviction of the appellant and award of sentence of 7 years RI with fine of Rs.1000/- under Section 376 IPC. The appellant was further directed to undergo 2 years RI coupled with fine of Rs.500/- under Section 363 IPC and four years RI with fine of Rs.500/- under Section 366 IPC. He was further required to undergo identical imprisonment for three months in case of default of payment of fine awarded under each of the offences separately. The sentences were directed to run concurrently. That is how the appellant has filed the present appeal.

Mr.R.S.Mamli, Advocate appearing for the appellant, at the very out-set points out that the appellant was taken in custody on 4.2.2002. By now, the appellant has undergone almost a sentence of six years RI out of the sentence of 7 years RI awarded to him. Initially, the counsel made an attempt to plead that offence under Section 376 IPC in this case would not be made out. He would refer to certain salient features of the case to urge that the appellant and the prosecutrix indeed had got married. Learned counsel would point out to certain photographs or letters to substantiate his plea.

I have duly considered the said submissions made by the counsel. The photographs referred and relied by the counsel are not found to have been sufficiently proved. The trial Court did not accept the plea raised by the appellant mainly by observing that the prosecutrix was abducted by putting under threat to her life by showing knife etc. Some photographs, even if existing, thus would

not be of much importance. The appellant, being in position of dominance and prosecutrix being under threat, could have easily got herself photographed. All these and other submissions on behalf of the appellant in this regard were duly considered by the trial Court. The version of the prosecutrix before the Court was categoric. She has complained of a forcible intercourse on number of occasions during her stay with the appellant, which was because of threats advanced by the appellant to her. I do not find any reason to interfere with the conviction of the appellant recorded under Sections 363, 366, 376 IPC.

In fact, the attempt of the counsel to make pleas on merits was half hearted and he mainly pleaded for concession in the sentence in view of the period undergone by the appellant. Learned counsel pleads that the appellant has suffered enough. He has already undergone substantial portion of sentence out of 7 years RI awarded to him. Counsel would say that the appellant is of young age being 23 years old. According to the counsel, he was staying as a tenant in house where he came in contact with the prosecutrix. Effort on his part is to show that the prosecutrix had voluntarily accompanied the appellant and that they had got married. No doubt, they both had remained together for a considerable period before they were taken in custody on 4.2.2002 but evidence shows that it was under threat that he kept the prosecutrix captive. He has not been able to substantiate his pleas in this regard. The counsel then pleads that the appellant is a very poor person. He is from West Bengal. He is stated to be repentant for that he did. Plea for showing leniency in award of sentence is, thus, made. Prayer is that period of

sentence awarded to the appellant be reduced to one which he has already undergone.

As noticed in one recent case decided by this Court that rape is an outrageous act by all norms and an unjustifiable conduct, which is unacceptable in a civilized society. Generally, in such lust loaded crime, one can not have any justification to award lenient sentences. However, sentencing efficacy in like such crime can not be assumed simply by award of long prison term. That if done even may aggravate malady where a young mind would be exposed to criminal company and environmental pollution leading to de-humanization. The Court appears to have awarded sentence of 7 years to the appellant as that is the minimum sentence, which can be awarded for the offence under Section 376 IPC. If the Court intends to award any sentence less than the minimum sentence prescribed, it is obligatory for the Court to give reasons and justification thereof. Some special reasons which have been highlighted are the poor state of the appellant, his young age, his remorse, this being his first offence, he being not habitual offender or hardened criminal who need to be made an example etc. The period undergone by the appellant is also emphasized before the Court to relent a bit on principles to show compassion in reducing the sentence less then minimum. The atmosphere in the prison what it is, would not be conducive to expose the young appellant to remain in that jail environments. Some special circumstances may constrain me a bit to lessen the rigors of the appellant. The appellant appears to have suffered enough.

Accordingly, while dismissing the appeal the sentence

awarded to the appellant is reduced to the period already undergone. The appellant if in custody would be entitled to be released on receipt of the order.

December 11,2007 **(RANJIT SINGH)**
khurmi **JUDGE**